

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

The Orange Rabbit, Inc., et al.,

Case No. 19-cv-687 (MJD/ECW)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

Franchoice, Inc., et al.,

Defendants.

This matter is before the Court on Defendants’ Motion to Dismiss Pursuant to Rules 12(b)(6) and 9(b) (Dkt. No. 7) (“Motion to Dismiss”). The Motion to Dismiss has been referred to the undersigned United States Magistrate Judge for a report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. (Dkt. No. 15.) For the reasons stated below, the Court recommends the Motion be denied as moot.

Defendants filed the Motion to Dismiss the original Complaint on April 11, 2019. (Dkt. No. 7.) Twelve days later, on April 23, 2019, Plaintiffs filed an Amended Complaint (Dkt. No. 14). Under Federal Rule of Civil Procedure 15(a)(1)(B), “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)” Plaintiffs properly filed the Amended Complaint “as a matter of course” since it was within 21 days of being served with the Motion to Dismiss.

Generally, when a plaintiff files an amended complaint, it moots a pending motion to dismiss. *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002) (“If anything, Pure Country's motion to amend the complaint rendered moot Sigma

Chi's motion to dismiss the original complaint.”). In some cases, “a court may choose to apply an already-filed motion to dismiss to the later-filed amended complaint.” *Manos v. Fed. Bureau of Prisons*, 18-CV-0427 (PJS/HB), 2019 WL 1494604, at *2 (D. Minn. Mar. 11, 2019), *R&R adopted*, 2019 WL 1491789 (D. Minn. Apr. 4, 2019). Here, however, the Court finds that it would be inefficient to apply the Motion to Dismiss to the Amended Complaint as it contains new material not addressed in the Motion to Dismiss. Defendants will not be prejudiced and may bring a new motion to dismiss if they so choose. *See id.* Accordingly, based on the files, records, and proceedings herein, **THE COURT RECOMMENDS THAT:**

Defendants’ Motion to Dismiss Pursuant to Rules 12(b)(6) and 9(b) (Dkt. No. 7) be **DENIED AS MOOT**.

DATED: April 26, 2019

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under District of Minnesota Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in D. Minn. LR 72.2(c).